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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,281	03/10/2004	Eugene Balensiefer	20341-73173	2937

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EXAMINER

HAWK, NOAH CHANDLER

ART UNIT PAPER NUMBER

3636

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/797,281	Applicant(s) BALENSIEFER, EUGENE	
	Examiner Noah C. Hawk	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.  
     4a) Of the above claim(s) 5,22-25 and 29-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-12,17-21 and 26 is/are rejected.
- 7) ☒ Claim(s) 13-16,27 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/16/04, 6/14/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims directed to the following patentably distinct species: Group I – Figures 2, 4, 5, 7-13, Group II – Figures 15 and 16. The species are independent or distinct because the device of Group 2 has a two-part engagement means whereas the device of Group 1 has a single-piece engagement mechanism.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 10-16, 17-21 and 26-28 are deemed generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

2. During a telephone conversation with attorney Rick Rezek on 8/30/06 a provisional election was made without traverse to prosecute the invention of Group I, claims 2-4 and 6-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5, 22-25 and 29-36 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4 and 6-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Kain in US Publication 2004/0124676.

a. Regarding Claim 1, Kain discloses a juvenile seat having a base including a bottom seat portion (24), a lower back section (26) positioned to lie at an angle relative to the seat, a headrest (16) coupled to the lower back section for up and down motion and including a back plate (64) and first and second side walls (66) and a height adjustment mechanism including an actuator (132) coupled to one of the side walls and configured to move between a locked position and an unlocked position.

- b. Regarding Claim 2, Kain further discloses that the height adjustment mechanism includes a height adjustment bar (78) coupled to the actuator and bar receivers (122, 124, 126, 128) in the lower back section.
- c. Regarding Claim 3, Kain further teaches that the actuator is a first actuator and a second actuator (both represented by reference number 132) one actuator coupled to a first wall of the headrest and the other coupled to the second wall of the headrest.
- d. Regarding Claim 4, Kain further teaches that the height adjustment bar includes a first end portion coupled to the first actuator and a second end portion coupled to the second actuator (best seen in Figure 19).
- e. Regarding Claim 6, Kain further teaches that the actuator further includes an anchor member (136) and a push button (130) having a spring (86) coupled to the button to bias the push button to the locked position.
- f. Regarding Claim 7, Kain further teaches that the lower back section includes a front wall (80) and first and second side walls (18, best seen in Figures 7-9) and the bar receivers (222, 224, 226, 228) are formed within the side walls.
- g. Regarding Claim 8, Kain further teaches that the anchor member 136) has a guide slot (the hole therethrough) to permit back and forth movement (via the actuator) of the height adjustment bar between locked and unlocked positions.
- h. Regarding Claim 9, Kain further teaches that the push-button is movable along a first axis (generally front-to-back with respect to the seat) and the

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headrest is movable along a second axis (generally up-and-down with respect to the seat) that is perpendicular to the first axis.

i. Regarding Claim 10, Kain further teaches that the lower back section has a front surface (26 in Figure 1) and the headrest is positioned adjacent said front surface.

j. Regarding Claims 11 and 12, Kain further teaches an anti-backout mechanism coupled to the headrest and including a stopper (80) coupled to one of the first and second side walls to engage a top wall (82) of the lower back section.

5. Claims 17-21 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Kain '676.

k. Regarding Claim 17, Kain discloses a juvenile seat having a base with a bottom seat portion (24) a lower back section (26) coupled to the base to lie at an angle to the bottom seat, a headrest (16) coupled to the lower back section for up and down movement relative to the lower back section and between a locked and unlocked position, and means for adjusting a height of the headrest above the base (including actuators 132 and bar 78) coupled to the sidewall of the headrest for side operations of the height-adjusting means.

l. Regarding Claim 18, Kain teaches that the height adjusting means further includes means (132) for moving the headrest between the locked and unlocked positions coupled to the sidewall of the headrest.

m. Regarding Claims 19 and 20, Kain further teaches that the means for moving the headrest includes a plurality of vertically spaced slots (122, 124, 126, 128) provided in the lower back section and a height adjustment bar (78) coupled to the means for moving the headrest between the unlocked position and biased (by spring 86) to be received in the vertically spaced slots in the locked position.

n. Regarding Claim 21, Kain further teaches that the means for moving the headrest to the unlocked position includes a push button (130) coupled to the height adjustment bar.

o. Regarding Claim 26, Kain further teaches means (80) for preventing the headrest from being removed from the lower back section as the headrest is being moved upward.

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

#### ***Allowable Subject Matter***

6. Claims 13-16, 27 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kain et al., Kain '493, Kain '939, and Meeker et al. disclose car seats with movable headrests.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah C. Hawk whose telephone number is 571-272-1480. The examiner can normally be reached on M-F 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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